

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Traffic Criminal Case No: 594 - 2015

STATE

-v-

KERESI DUGU SOKOTA

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitaasi S. [Police Prosecution]
For Defendant : Ms. Henao G. [Legal Aid Commission]
Trial Date : 2nd December 2019 and 17th January 2020
Date of Judgment : 12th May 2020
Date of Sentence : 9th of June 2020

SENTENCE

1. **KERESI DUGU SOKOTA**, you denied the allegation or charge preferred by the prosecution and after a trial was held, I have found you guilty and convicted you of the following:

Statement of Offence

DANGEROUS DRIVING OCCASIONING DEATH: Contrary to section 97 (2) (c), 5 (a) and 114 of the Land Transport Act No. 35 of 1998.

Particulars of Offence

KERESI DUGU SOKOTA on the 12th day of September 2015 at Tavua in the Western Division drove a motor vehicle registration number HX 074 on Kings Road Tagi Tagi, Tavua in a manner dangerous to another person, involved in an impact with another person and occasioning the death of **DAIANA NABALARUA**.

2. The defendant is provisional license holder and had her license for a few months. She was driving from Lautoka towards Rakiraki along the Kings road in a Toyota Prius with her children. The family was planning to attend a carnival. It was around 3pm. There is no indication other than the weather was normal. There was no mechanical

defect with the vehicle. With the defendant in the vehicle, were three of her children. The eldest is the deceased and who was 12 years old at the time. The deceased was seated in the rear passenger seat. Only the defendant and another child who was seated in the front passenger seat had their seat belts on. When they reached Tagitagi, a vehicle overtook them and because of oncoming traffic, that overtaking vehicle 'squeezed' in front of the defendant's vehicle and another vehicle already in front of the defendant's vehicle. The defendant was travelling at approximately 74 kmph. The speed limit for that sector is 60kmph. The defendant panicked, her leg slipped and instead of pressing the brake of her vehicle, she pressed the accelerator. The defendant lost control and swerved the vehicle onto the oncoming lane, past the oncoming lane and onto the side of the road down a field resulting in the vehicle tumbling twice. Before the vehicle came to a stop, two of the children were thrown out of the vehicle. One of them was the deceased. Moments later the deceased was seen lying motionless near a piece of wood with blood on her face and ears. The deceased sustained serious traumatic head injury.

3. The defendant was interviewed by police approximately 3 weeks later. Amongst other things, the defendant admitted that she was the driver and that she panicked and drove off the road after the other unidentified vehicle came in front of her suddenly.
4. The defendant has not spent any time in remand.
5. The defendant has no previous conviction and no prior traffic violation.
6. The defendant is 37 years old. She supports 4 children. The eldest is 18 years old and the youngest is 7 months old. The children are in school except for the youngest. The deceased was the 2nd oldest. The defendant works as an administrator with a private Company and earns \$1,000 monthly. She is the sole breadwinner for the family. She was driving to Rakiraki on the day in question to meet her husband and for the family to attend a carnival. She accepts that the children seating in the rear seat including the deceased did not have their seat belt on. It was poor judgment and she is regretful and takes full ownership of the consequence. This was a case of momentary lapse of judgment. The defendant is still haunted by what happened, every single day. The death of the deceased is punishment already. It was not intended or premeditated. The defendant is remorseful and promises not to re-offend.

14. Non-custodial sentences or short custodial sentences are reserved for death caused by momentary in-attention without any aggravating factor.
15. Drivers who show selfish disregard for other road users should be given sentences at the higher end of the tariff.
16. I classify the defendant's case as falling within the 'momentary in-attention' category.
17. Amongst other things, the **Sentencing and Penalties Act 2009** particularly section 4 (but not limited to) will guide me when deciding the defendant's sentence.
18. Your sentence is aimed at punishing you to an extent and manner which is just in all the circumstance.

Starting Point

19. Based on the objective seriousness of the offence, I select 2 years imprisonment as the starting point.

Aggravating Factor

20. There were 2 other children in your vehicle. Epele your son was also thrown from the vehicle.
21. You did not make sure that all your children had their seat belts on.
22. I am sure that you were not aware, but you were driving above the legal limit for that stretch and exceeded the legal limit by approximately 14kmph.
23. Your vehicle went onto the oncoming lane and onto the other side of the road. More people could have been injured or killed. Fortunately, this did not happen.
24. I increase your sentence to 3 years imprisonment.

Mitigating Factors

25. Although you did not give oral evidence during the trial and although you have pleaded not guilty, I have observed you during the course of the proceedings and I accept that you feel guilt for causing the death of your child. You get emotional in the dock when we discuss your case in court and even when I passed your judgment.
26. I accept that you are traumatised by what has happened and that the death of your child will be burden you will have to carry for the rest of your life.
27. You have no previous conviction or traffic violation.
28. You were a provisional license holder at the time and you had been driving for a few months.
29. You did not create the situation when the other overtaking vehicle tried to squeeze in front of you.
30. You have a family to support and you are the sole breadwinner.
31. I accept that this case has been looming over you for the past 5 years.
32. I reduce your sentence to 2 years imprisonment.

Suspended Term and Disqualification

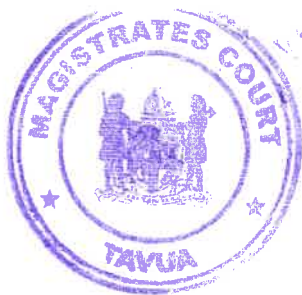
33. I can suspend your sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**, if your sentence does not exceed 2 years imprisonment.
34. It is not discretionary whether the court should disqualify you from holding or obtaining a driving license pursuant to section 59 of the **Land Transport Act 1998**.
35. The law says that it is mandatory. The primary question is how long should your disqualification period be and it can be between as low as 6 months even up to life.
36. The length of time you can be disqualified from holding or obtaining a driver's license can be determined by assessing the standard of driving shown, any previous traffic violations, the need to protect the public from dangerous or drunk drivers, good character of the defendant and whether there is any serious hardship to the

family and whether driving is a source of income [State v Joel Sahai Case No. HAAR 002 of 2017 (29th August 2017)].

SUMMARY

37. You did not spend any time in remand and so no further reduction will be made to your sentence.
38. You are sentenced to 2 years imprisonment.
39. I am persuaded to suspend your sentence in whole.
40. You are not to commit any other serious offence or offence punishable with imprisonment in the next 18 months, if you do, you risk having this 2 years imprisonment held in reserve being activated.
41. I decline imposing any fine on you considering the circumstance of this case and that you have recently given birth and that you are the sole breadwinner and you have 4 children to support.
42. I disqualify you from obtaining or holding a driving license for the next 10 months.

[surrender your license]
43. 28 days to appeal



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Lisiate T.V. Fotofili

Resident Magistrate

Dated at Tavua this 9th day of June, 2020.